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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 207) CS Docket No. 96-83
of the Telecommunications Act of)
1996)
)
Restrictions on Over-the-Air)
Reception Devices: Television)
Broadcast and Multichannel)
Multipoint Distribution Service)

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To: The Commission

COMMENTS OF PRIMESTAR PARTNERS L.P.

PRIMESTAR PARTNERS L.P. ("PRIMESTAR"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹

Section 207 of the Telecommunications Act of 1996² directs the Commission to promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video

¹ *Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, FCC 96-151 (released April 4, 1996) ("NPRM").

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Telecommunications Act")

programming services through devices designed for over-the-air reception of television broadcast signals ("TVBS"), multichannel multipoint distribution service ("MMDS") or direct broadcast satellite service. PRIMESTAR filed comments and reply comments in the Commission's proceeding concerning the statutory mandate with regard to direct broadcast satellite signals.³

Since 1990, PRIMESTAR has been providing direct-to-home ("DTH") satellite television service using a medium-power fixed satellite operating in the Ku-band. PRIMESTAR currently offers 95 channels of entertainment and informational programming, including hit movies, regional sports networks, breaking international and national news, family programming, home shopping, pay-per-view and digital music channels to over one million subscribers. PRIMESTAR is keenly interested in the rules the Commission will craft to ensure that consumers have access to a broad range of video programming delivery services, and to foster full and fair competition among different types of video programming delivery services.

The Commission's NPRM indicates that it will take note of and draw upon comments filed in response to the Order and Further Notice in formulating its rules governing

³ *Preemption of Local Zoning Regulation of Satellite Earth Stations*, IB Docket No. 95-59, FCC 96-78 (released March 11, 1996) (Order and Further Notice).

restrictions on TVBS and MMDS reception devices.⁴ PRIMESTAR will not reiterate here, therefore, its comments concerning local restrictions on the use and deployment of small satellite antennas. PRIMESTAR urges the Commission, however, to focus on those arguments made in response to the Order and Further Notice advocating adoption of a flat, or per se rule of preemption, rather than a presumption of preemption, of local governmental restrictions that impair a viewer's ability to receive certain multichannel programming services. Consistent with Section 207 of the 1996 Telecommunications Act, and for reasons elaborated upon by a variety of commenters in the parallel earth station proceeding, PRIMESTAR submits that the Commission should revise its proposed rule to create a per se preemption of restrictions that impair a viewer's ability to receive TVBS and MMDS signals. A clearly defined waiver procedure, as opposed to a rebuttable presumption, is the appropriate safety valve for truly extraordinary and unique situations.

In short, to the extent local zoning ordinances or regulations, whether governmental or private, prevent or frustrate consumers' ability to receive multichannel television distribution services which utilize antennas, as opposed to wire transmissions, those services, and, ultimately, the public, are harmed. Only a per se ban on

⁴ NPRM at ¶5.

governmental and private regulation of multichannel receive antennas can ensure that consumers will have the freedom necessary to make these services viable competitors to providers using wire transmissions. Any other rule creates undue uncertainty, and will provide local officials with the opportunity to attempt to justify and enforce burdensome regulations, leaving consumers with the choice of challenging or complying, neither of which is an attractive option. As a result, users will opt for "easier" services, i.e., those that use wireline technology.


In enacting Section 207, Congress clearly recognized that "state and local regulation can and does interfere with the federal interest in widespread access to all forms of video delivery, and that preemption by the Commission is the appropriate response to such interference with the federal interest." Order and Further Notice at ¶ 59. In the same manner that the presumption of preemption adopted with respect to small earth station antennas does not go far enough in fulfilling Congress' directive, the proposed rule creating a presumption of preemption for MMDS and TVBS antennas will leave open the ability of local governments to attempt to justify continued regulation. Had Congress intended to stop short of a per se preemption of local law and regulation affecting the technologies covered by Section 207 of the 1996 Telecommunications Act, it would have so

indicated, as it did in numerous other instances throughout the 1996 Telecommunications Act.⁵

For the reasons expressed herein and in its comments filed in response to the Order and Further Notice, PRIMESTAR urges the Commission to adopt a per se preemption with respect to local restrictions that impair a viewer's ability to receive TVBS and MMDS signals, and to adopt its proposal to extend such a per se preemption to nongovernmental or quasi-public restrictions. Only a per se preemption will effectuate Congress's intent to facilitate the proliferation of alternative television delivery services.

Respectfully submitted,

PRIMESTAR PARTNERS L.P.

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⁵ See, e.g., 47 U.S.C. §§ 251(d)(3), 254(f).